

1 THE HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 ANN KELLETT, et al.,

11 Plaintiff(s),

12 v.

13 ASSEMBLED PRODUCTS  
14 CORPORATION, et al.,

15 Defendant(s).

CASE No. C12-622RAJ  
ORDER

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17 This matter comes before the court on Defendant New Albertson's Inc.  
18 ("Albertson's") Motion for Reconsideration. Dkt. # 27. Plaintiff opposes the motion.  
19 Dkt. # 29.<sup>1</sup>

20 Motions for reconsideration are disfavored and will be granted only upon a  
21 "showing of manifest error in the prior ruling" or "new facts or legal authority which  
22 could not have been brought to [the court's] attention earlier with reasonable diligence."  
23 Local Rules W.D. Wash. CR ("LCR") 7(h)(1).

24 Albertson's argues, in part, that the court erroneously applied the *Pimentel*  
25 exception. In the order, the court noted that "a trier of fact could reasonably conclude

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27 <sup>1</sup> The court has disregarded Albertson's reply as the court did not authorize the filing of a  
reply. Accordingly, Plaintiffs' motion to strike the reply is MOOT. Dkt. # 33.

1 that Albertson's is a self-service operation." Dkt. # 24 at 7 n.11. However, whether or  
2 not the *Pimentel* exception applies is often determined as a matter of law. *Charlton v.*  
3 *Toys "R" Us—Delaware, Inc.*, 158 Wash. App. 906, 918, 246 P.3d 199 (Wash. App.  
4 2010). Additionally, the Washington Supreme Court has indicated that "the *Pimentel*  
5 rule does not apply to the entire area of the store in which customers serve themselves."  
6 *Ingersoll v. DeBartolo, Inc.*, 123 Wash. 2d 649, 653, 869 P.2d 1014 (Wash. 1994).  
7 Accordingly, the court committed manifest error in indicating that a reasonable jury  
8 could conclude that Albertson's is a self-service operation.

9 For all the foregoing reasons, Defendant's motion for reconsideration is  
10 GRANTED. The court will issue an amended order that withdraws and amends the  
11 court's May 8, 2013 order. The Clerk is directed to terminate Plaintiffs' motion to strike  
12 the reply as MOOT. Dkt. # 33.

13 Dated this 10th day of June, 2013.

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17 The Honorable Richard A. Jones  
18 United States District Judge  
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